

Technical Guidance on Mandatory Furloughs
Created July 22, 2009, updated July 28, 2009

* Denotes new material or information.

The following guidance is provided based on Executive Order D 015 09 issued by the Governor on July 22, 2009. It orders employees in the State Personnel System to take four specified mandatory furlough days, unless their positions have been exempted under the Executive Order. The furlough days specified to date are: Tuesday, September 8, 2009 (day after Labor Day); Friday, October 9 2009 (day before the Columbus Day weekend); Friday, November 27, 2009 (day after Thanksgiving); and Thursday, December 31, 2009 (New Year's Eve). This guidance applies to all Executive Orders regarding mandatory furlough days and may be updated at any time.

All Executive Directors in consultation with their human resources directors are to develop and communicate policies that include, at a minimum, the following items:

- Standards for granting alternate mandatory furloughs days as outlined within the Executive Order. This includes identifying criteria that will be taken into consideration.
- Policies on how to handle electronic devices that allows remote access, such as BlackBerries, pagers, and cell phones.
- How exempt employees will record their work time during the week of a furlough.
- Directives for how appointing authorities will manage the work hours for the week of the furlough.
- Develop standards for communicating any policies and consequences for violating policy related to working unauthorized work time. DPA recommends issuing a notice to all employees (e.g., email) and posting (e.g., by wage and hour poster). If a non-exempt employee works more than authorized without prior approval the compensation is still owed (overtime or straight time, as applicable).
- Develop standards and consequences for a furlough-exempt employee who takes an unauthorized absence on a designated furlough day.

* It is strongly recommended that these policies also include clear guidance to supervisors that they cannot require any employee to make up any work time lost during the week of a furlough, including overtime exempt employees. For example, an employee cannot be required to work an additional 4 hours the day before and 4 hours the day after the furlough occurs, to make up for lost productivity. Supervisors are expected to use sound business judgment and respect and promote employee work-life effectiveness. In addition, non-exempt employees who are required to work additional hours during non-furlough weeks would likely increase overtime costs and negate any cost savings to the State realized from the furlough. Although FLSA exempt employees are not bound by 40 hour workweeks during non-furloughed weeks, they should not be

expected to work additional hours to make up for furlough time or more hours than they would normally work if it were not for the mandatory furloughs.

Furlough Exemptions

There are state employees in departments that are subject to the Executive Order, who will be exempt from the mandatory furlough requirement. The directives section of the Executive Order contains descriptions of the exemptions by department. No later than July 31, 2009, the Executive Director of each department that has exemptions shall, in consultation with and subject to the approval of the Office of State Planning and Budgeting (“OSPB”), designate the specific positions that fall within the scope of the exemptions set forth in the Executive Order.

Executive Directors of departments subject to the Executive Order, in consultation with and approval of OSPB, may modify the list of positions exempt from the furloughs from time-to-time in order to adapt to changes in the workforce, including but not limited to reassignments, separations, and new hires; however, in order for any modification to be effective for a particular furlough day it must be made no later than the last day of the month prior to the month in which the furlough day is to be taken.

Furlough-Exempt Employees and Paid Leave

Designated furlough-exempt employees, who would normally be scheduled to work on a designated furlough day, are expected to work on that day. The basis for the Governor’s exemption of particular positions is that these employees are necessary to perform critical business functions and maintain critical staffing levels. Paid leave of any kind, including compensatory time, shall not be approved for any employee, with the exception of jury duty leave. No annual leave will be approved for any designated furlough day. If annual leave has already been approved in advance, the department shall withdraw the approval for that designated furlough day. Employees may request and Executive Directors have the flexibility to grant leave without pay for furlough-exempt employees who are normally scheduled to work and have requested leave in advance on a furlough day. No donated leave under a department’s leave sharing program shall be approved for a designated furlough day. If a furlough-exempt employee calls in sick on a scheduled furlough day, the mandatory furlough must be applied, not paid sick leave. The only exception for a furlough-exempt employee to be absent on a furlough day is if an FMLA qualifying event occurs on that day. In such a case, FMLA will be designated as appropriate and the leave will be unpaid.

The remaining portion of this guide applies only to employees that are **not** exempt from mandatory furloughs.

Scheduling Alternate Furlough Days

The Executive Order grants some flexibility to Executive Directors to determine if an employee is required to work on a mandated furlough day to avoid substantial hardship on the citizens of the State or substantial impairment of the ability of the State to meet its legal obligations. In addition, an employee may be required to respond to an emergency

on a scheduled furlough day. In such a case, Executive Directors must schedule an alternative furlough day.

For employees who are scheduled to be on paid leave or compensatory time (including paid FMLA), the department must credit back the paid leave or compensatory time and charge the employee an unpaid furlough day. If an employee has been scheduled to work (e.g., scheduled to be at training or a conference), the appointing authority must schedule an alternate furlough day within the prescribed period in the Executive Order.

Preferably, an alternative furlough day will be scheduled within the same pay period as the scheduled furlough day, but in no case may more than one furlough day be taken in the same workweek. Appointing authorities cannot require employees to take more than one furlough day in a pay period. However, if an employee is eligible for an alternate furlough day, and it is approved by the executive director, an employee can take additional furlough days within the same pay period. Departments are strongly discouraged from scheduling more than two days in a pay period. Under no circumstances may more than one furlough day be scheduled in a single work week, as this may cause the employee to be eligible for unemployment benefits.

Calculating a Day of Furlough

Calculate the annualized hourly base salary rate by multiplying the monthly base salary rate by 12 months, then dividing by 2080 hours; multiply this rate by eight hours to establish the cost of one day of furlough. CPPS will automatically apply the furlough day to all employees in the appropriate pay period. All departments that use CPPS for payroll may have to manually adjust for employees who are exempt from mandatory furloughs. If alternate furlough days are taken within the same pay period, the departments do not need to manually adjust employees pay in CPPS. Departments needing alternate arrangements will need to work with Central Payroll.

The reduction of pay for a day of furlough is not a permanent salary cut; thus, employees near or at the range minimum will not be considered below the range minimum in a furlough month. The salary remains the same rate; pay is just temporarily lower due to the furlough day and the accompanying reduction in compensable work hours for that month.

FLSA-Exempt Employees

During the week of a mandatory furlough, FLSA-exempt employees lose exempt status and are treated as salaried non-exempt employees in that work week. This means that those employees will be eligible for overtime during the week of the furlough, and must be paid time and a half for any work over 40 hours within that work week. However, as the purpose of mandatory furloughs is to save personal services dollars, in effect, employees cannot work or be on paid leave more than 32 hours in a furlough week. Any time over 32 hours in a furlough week negates the budget savings from the furlough.

Departments must establish policies on how to handle electronic devices that allow remote access (e.g., BlackBerries, cell phone, and pagers). In addition, exempt

employees must record their work time during each week of the furlough in order to ensure compliance with the FLSA.

Appointing authorities will need to manage the work hours for the week of the furlough. To help manage and keep work hours and paid leave to no more than 32 hours in the week in which a furlough occurs, DPA recommends, where possible, that departments require employees to work no more than 8 hours for each day an employee is scheduled to work. Where it is not possible the following example illustrates another way to manage an employee's work time.

Example Employee A

Non-essential (per C.R.S. 24-50-104.5) employee A has 8 hours of holiday on Monday, takes the furlough day on Tuesday (unpaid and not counted towards total hours worked) and works 10 hours each Wednesday and Thursday, for a total of 28 work hours. Employee A may only work 4 hours on Friday for a total of 32 hours (includes all time worked and paid leave) for that work week in which a furlough occurs.

Example Employee B

By Statute C.R.S. 24-50-104.5, non-exempt employees designated as essential employees must have paid leave counted as work time for overtime purposes. Because furlough days are not paid leave, furlough days are not counted as work time for essential employees. However, holidays and other paid leave are counted as work time and appointing authorities still need to be cognizant and manage the number of hours an employee works to minimize any overtime liability. For example, if essential employee B has 8 hours of holiday Monday, takes the furlough day on Tuesday (unpaid and not counted towards total hours worked), 10 hours on Wednesday, and 12 hours on Thursday for a total of 30 hours (includes all time worked and paid leave), they may only work 2 hours on Friday for 32 hours in that furlough workweek.

Departments must communicate to all employees any policies and consequences related to working unauthorized hours. DPA recommends issuing a notice to all employees via email and posting (e.g., by wage and hour poster). DPA will provide a template for departments to adopt. If a non-exempt employee works time without prior approval, the compensation is still owed (overtime or straight time, as appropriate) and must be paid. In addition to paying the unauthorized time, Executive Directors must follow through with employee consequences for violations of those policies.

*For those employees that fall under the 7k exemption of the FLSA, work hours within the work period will need to be reduced by 8 hours. For example, if the maximum hours an employee can work in a designated 28 day work period are 160 hours, those hours will need to be reduced to 152 hours in the work period. Therefore, employees should only have a combined total of work hours and paid leave equal to 152 hours in the designated work period. If employees continue to work their normal work schedule for the work period, no savings will be realized from the furlough days. In addition, appointing authorities need to manage employees work time in order to avoid possible overtime. In

the example above, if the employee were to work more than 160 hours during the designated work period, over time compensation would be owed.

* DPA recommends that departments notify all FLSA-exempt employees, in writing, of their FLSA status during the week a furlough occurs. FLSA-exempt employees who are required to work on a declared furlough day will not be considered non-exempt in that workweek. Instead, those employees will become non-exempt in the week that they take their alternative furlough day. Only the week in which the furlough day is actually taken will the FLSA exemption be lost. Executive Directors must schedule an alternative furlough day in such a case, and that alternative furlough day must be within the prescribed period in the Executive Order. Preferably, the alternative furlough day will be scheduled within the same pay period as the scheduled furlough day, but in no case may more than one furlough day be taken in the same work week.

Flexible Schedules

No full-time employee will be required to furlough more than 8 hours in the furloughed workweek. No full-time employee is allowed to work or be on paid leave more than 32 hours in the defined furlough workweek. For example, if an employee typically works four 10-hour shifts in a single workweek, the employee will only be required to furlough for 8 hours in that week – not a 10-hour day. In other words, that employee must be scheduled to work or be on paid leave a total of 32 hours that week. Another option is for that employee to work three 10-hour shifts like normal and request paid leave for the remaining two hours. If a furlough is scheduled on a day that an employee is not scheduled to work, an alternate furlough day must be chosen, preferably in the same work week.

Departments may find it more manageable for tracking and scheduling purposes to place employees that normally work a flex schedule on a regular 8-hour-day work schedule. However, this is not a requirement.

Transfer or Replacement of Furlough Days

No employee can substitute a holiday, paid leave, or compensatory time for a furlough day. No employee can take an additional furlough day for another employee. Employees can, however, take the equivalent amount of money that they were willing to furlough for someone else and donate it to The Working Together Foundation or the Colorado State Employee Assistance Program for the benefit of their fellow state employees. The Working Together Foundation is a non-profit entity created exclusively for the benefit of state employees. It provides emergency financial assistance for basic living necessities. Employees will need to work directly with the Working Together Foundation and CSEAP regarding the details of the donation process. More information regarding Working Together can be obtained at www.state.co.us/dhr/wt or by calling 303.831.8645 (voice messaging only). CSEAP may be contacted at webcseap@state.co.us or 800-821-8154.

Rule 5-2

The State Personnel Director has determined that the requirement for employees to exhaust all paid leave prior to being placed on unpaid leave does not apply during a mandatory furlough.

Short-term Disability (STD) and Workers Compensation Benefits and Injury Leave

STD and workers compensation benefits are not impacted by the furlough. Employees will continue to receive STD benefits and the furlough day will be leave without pay as it is today. Those employees receiving workers compensation benefits and are in “make whole” status or have been granted injury leave will continue to receive the two-thirds benefit from Pinnacol and the portion that would normally be paid leave to make the employee whole will be unpaid. Injury leave shall not be granted on designated furlough days.

Part-time, State Temporary Employees, and Contract Workers

For part-time employees, the furlough day will be prorated based on the percentage of time the employee is scheduled to work. For example, if an employee typically works four 8-hour days in a week then the employee would be furloughed 80% of an 8-hour day or 6.4 hours. If a part-time employee is not scheduled to work on the specified furlough day, the alternate furlough day process shall be used. The furlough time must be taken during the scheduled work time in the furlough week.

State temporary employees who are not expressly exempt from the furloughs are also required to furlough during the furlough week and schedules should be adjusted accordingly.

Because most state offices are closed during furloughs, contract workers will not be able to provide services. Departments must take steps to notify contract workers in advance of the furlough days so adjustments can be made as necessary.